

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 778 of 2011**

1. Bechan Ram Bargah S/o Bhartha Bargah, aged about 40 years, R/o Village Chitarpur, Pahadpara, P.S. Dhourpur, Distt.-Surguja, C.G.

---- Appellant (in Jail)**Versus**

1. State of Chhattisgarh, through Station House Officer, Police of Police Station, Dhourpur, Distt. Surguja (C.G.)

---- Respondent

For Appellant	:	Mr. Ajay Mishra, Advocate.
For Respondent/State	:	Mr. Mahesh Mishra, P.L.

Hon'ble Shri Justice T. P. Sharma
Hon'ble Shri Justice Inder Singh Uboweja

Judgement on Board by T.P.Sharma, J.

22/04/2015

Challenge in this appeal is to the judgment of conviction and order of sentence dated 29.06.2011 passed by the 2nd Additional Sessions Judge, Ambikapur, Dist. Surguja, in Sessions Trial No. 124/2010 whereby and whereunder after holding the appellant guilty for causing homicidal death amounting to murder of Sadhram, the trial Court convicted the appellant under Section 302 of the I.P.C. and sentenced him to imprisonment for life with fine of Rs.1000/- and in default of fine amount to undergo additional RI for one month.

2. Conviction of the appellant is impugned that without there being any iota of evidence against him, the trial Court convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on fateful day of 17.12.2009 at 3.00 pm, the unfortunate deceased – Sadharam was sleeping on cot in his house, the appellant came to his house. Thereafter, he took out a wooden plank kept for using the same in the field and caused injury to deceased, resulting into the instantaneous death of deceased. P.W.3 Moto witnessed the incident and informed the same to the others. Then P.W.2 Etvaram went to Police Station Dhourpur and lodged F.I.R. vide Ex.P.3.

4. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.P.11, inquest over the dead body of deceased was prepared vide Ex.P.12. Spot map was prepared vide Ex.P.4. Bloodstained and plain soils were recovered from the spot vide Ex.P.9. Sealed cloths of the deceased were seized vide Ex.P.27. Dead body was sent for autopsy to Community Health Center, Dhourpur, vide Ex.P.24. P.W.10 Dr. R.K.Tripathi conducted autopsy vide Ex.P.17 and found following injuries and symptoms:

- (1) Lacerated wound over right eye of 6 cm x 2 cm x bone deep. Bone beneath this wound is fractured.
- (2) Abrasion over right side of front abdomen of 5 cm x 2 cm.
- (3) Mandible bone was fractured on right side.
- (4) Depressed area laceration was seen on nose and right side of face.
- (5) Some clotted blood in brain was present below frontal bone on right side.

Mode of death was shock and death was homicidal in nature.

5. During the course of investigation, appellant was taken into custody. He made disclosure statement of wooden plank vide Ex.P.6. The same was recovered at his instance vide Ex.P.7. Cloths of the appellant were seized vide Ex.P.8. Seized articles

were sent for chemical examination to F.S.L. and as per report of F.S.L. vide Ex.P.28, presence of blood upon wooden plank and stone was confirmed.

6. Statements of the witnesses have been recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').

7. After completion of investigation, charge sheet was filed before the Court of J.M.F.C. Ambikapur, who in turn committed the case to the Court of Sessions, Surguja. The learned Additional Sessions Judge received the case on transfer for its trial.

8. In order to prove the guilt of accused/appellant, prosecution has examined 13 witnesses. Accused person was examined under Section 313 of the Code wherein he denied the circumstances appearing against him and false implication and innocence in crime in question was claimed.

9. After providing an opportunity of hearing to the parties, the learned Additional Sessions Judge convicted and sentenced the appellant as aforementioned.

10. We have heard learned counsel for the parties and perused the record of trial Court including judgment impugned.

11. Mr. Ajay Mishra, learned counsel for the appellant, vehemently argued that that conviction of the appellant is based on the evidence of P.W.3 Moto, wife of deceased. Her evidence does not inspire confidence and trustworthy. She has not witnessed the incident. As per case of the prosecution, appellant deceased quarrelled and thereafter the incident took place. As per evidence of P.W. 10 Dr. Ramesh Kumar Tripathi, injuries found over the body of deceased would have been caused by fall. Therefore, the evidence adduced on behalf of prosecution is not sufficient for conviction of the appellant.

12. On the other hand, Mr. Mahesh Mishra, learned counsel for the State, argued

that evidence of P.W.3 Moto, wife of deceased, who was present on the spot at the time of incident is sufficient proving the guilt of the appellant.

13. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution. In the present case, homicidal death as a result of fatal injuries found over the body of deceased has not been substantially disputed on behalf of the appellant, but, on the other hand also established by the evidence of P.W.1 Ramdhani Yadav, P.W.2 Etvaram, P.W.3 Moto, F.I.R. Ex.P.3, P.W.10 Dr. Ramesh Kumar Tripathi and autopsy report Ex.P.17.

14. As regards complicity of the appellant in crime in question, conviction of the appellant is substantially based on the evidence of P.W.3, wife of deceased – Sadharam. As per her evidence, her husband Sadharam was sleeping on a cot in the house. The appellant came and assaulted him by stone and wooden plank and caused injuries. Appellant attacked deceased by throwing stone upon the chest of deceased, due to which, deceased died on the spot. Defence has cross-examined this witness at length, but has not been able to elicit anything in her cross-examination to discredit her testimony to the extent that appellant has not caused injuries upon the chest of deceased by plank and stone. Her evidence finds support from the medical evidence and is sufficient for drawing an inference that the appellant has caused homicidal death amounting to murder of deceased and is the author of the crime.

15. As regards question of motive, in case of direct evidence, motive loses its importance. Even otherwise, it is aid in criminality and can be inferred from the kind of weapon used, part of body hit, nature of injury and other circumstances. In the present case, deceased was sleeping on a cot in his house and appellant came and assaulted him and that time, deceased was unarmed and the appellant did not provide him any opportunity, which shows the grave intention of the appellant for causing homicidal death amounting to murder of deceased.

16. After appreciating the evidence available on record, the learned Additional Sessions Judge has rightly convicted and sentenced the appellant. On close scrutiny of the evidence available record, we also do not find any illegality and infirmity in the judgment of conviction and order of sentence warranting interference by this Court.

17. Consequently, the appeal, being devoid of merit and substance, is liable to be and is hereby dismissed.

(T.P.Sharma)

JUDGE

(I.S.Uboweja)

JUDGE